



WILLIAM YOUNGER GUESS
1144 PARLANGE
BATON ROUGE LA 70806

COPY MAILED

DEC 06 2007

OFFICE OF PETITIONS

In re Application of: William Y. Guess :
Application No.: 09/964,000 :
Filed: September 26, 2001 :
For: COAXIALLY COMBINED MEAT ROAST :
WITH STEAKS OR CHOPS CUT FROM SAME :

ON PETITION

Applicant's petition filed November 23, 2007 has been received. This petition is consider to be directed to the same issue as set forth in the petitions filed June 6, 2006 and February 2, 2007. All of the petitions are being treated collectively in this decision. Furthermore, the issue presented is being treated as a request withdrawal the holding of abandonment and not as a petition. As such, no fee is required for this request.

Upon further review of the decision mailed March 6, 2007, that decision is hereby **VACATED**.

The request to withdrawal the holding of abandonment is **GRANTED**.

BACKGROUND

The applicant of the present application is prosecuting the application on his own behalf as a Pro se applicant. The claims of the present application have been examined and finally rejected by the examiner in an office action mailed April 4, 2005. In response to the final rejection, applicant filed a notice of appeal June 9, 2005. The appeal was perfected on August 5, 2005 with applicant's filing of the appeal brief. On October 13, 2005, the examiner mailed a Notification of Non-Compliant Appeal Brief which set forth that the brief did not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. Applicant replied in a letter filed October 21, 2005:

In response to the Notification of Non-Compliant Appeal Brief, applicant disagrees and directs the examiners attention to 37 CFR § 41.37 (c)(1) which states clearly that appellants "not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:". Pursuant to this clear language, appellant is not required to include either a summary of the invention under

items under these headings as a courtesy to the board such that a single document (the brief) would contain the relevant, albeit in the case of the summary, cursory information. Appellant's invention is very simple.

Applicant filed a petition on June 6, 2006 and a further petition on February 2, 2007. The petition of February 2nd was addressed in a decision mailed March 6, 2007. That decision dismissed applicant's petition on the grounds that applicant did not file a response to the Notice of Non-Compliant Appeal Brief mailed October 13, 2005.

ISSUE

The issue to be decided here is whether the decision mailed March 6, 2007 is proper.

DECISION

The relevant rule for this decision is 37 CFR 41.37 and in particular, 41.37(c)(1) which states:

The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section: (Underlining added)

The relevant portion of the Manual of Patent Examining Procedure (MPEP) is MPEP section 1205.05 which states:

An exception to the requirement that all the items specified in 37 CFR 41.37(c)(1) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant pro se, i.e., there is no attorney or agent of record, and the brief was neither prepared nor signed by a registered attorney or agent. The brief of a pro se appellant which does not contain all of the items, (i) to (x), specified in 37 CFR 41.37(c)(1) will be accepted as long as it substantially complies with the requirements of items (i) through (iv) and (vii) through (x). (Underlining Added)

Applicant is prosecuting this application as a Pro se applicant. Therefore, the applicant is only required to comply with 37 CFR 41.37(c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x). While other issues may exist, such as the rejection of the claims under 35 USC 112, 1st para., these issues should be addressed as substantive issues in applicant's arguments in the brief on appeal. The sufficiency of the arguments contained of the brief on appeal is an issue for the Board of Patent Appeals and Interferences and will not be addressed in this decision.

This application is being forwarded to TC 1700 for appropriate action consistent with this decision.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Supervisor
Office of Petitions
(571) 272-3687
AK

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number

~~0994000~~

09/964 000

Filing Date

09/26/2001

First Named Inventor

Guess, William Y

Art Unit

1761

Examiner Name

Becker, Drew

Attorney Docket Number

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

☐

Petition

☐Petition to Convert to a
Provisional Application☐

Power of Attorney, Revocation

☐

Change of Correspondence Address

☐

Terminal Disclaimer

☐

Request for Refund

☐

CD, Number of CD(s) _____

☐

Landscape Table on CD

☐

After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☐Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please identify
below):**Remarks**

Notice of Intent to Sue

Petition

Examiner Letter

Credit Card Form

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Signature

William Y. Guess

Printed name

William Y. Guess

Date

11/20/2007

Reg. No.

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

William Y. Guess

Typed or printed name

William Y. Guess

Date

11/20/2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE

Appl. No. : 09/964,000 Confirmation
No. 3019
Applicant : William Y. Guess
Filed : 09/26/2001
TC/A.U. : 1761
Examiner : Becker, Drew

Director of Patents

Mail Stop 8

Mail Stop Office of the Solicitor

P.O. Box 1450

Alexandria, Va 22313-1450

Sir,

This letter is a notice of intent to sue relative to the Administrative Procedure Act regarding the above application. The attempts to derail the above application by various members of the office are clearly not in keeping with the constitution, the statutes, or the CFR. The administrative wrong doings fall clearly beyond the threshold standard of "arbitrary and capricious" and completely ignore and are contrary to the relevant statutes and regulations.

A third petition to withdraw an improper notice of abandonment is attached to this letter. The undersigned believes that this petition contains all the relevant facts.

Any aid in this matter provided by the Office of Solicitor toward a favorable resolution for the applicant would be greatly appreciated in the event that the attached third petition fails to correct these improprieties and put the appeal on track.

Failing a reasoned, proper and fair explanation of why the instant application should continue to be held abandoned, a complaint will be filed in a federal district court no sooner than sixty days from the mailing of this letter and attached petition.

Attached to this document may be found the letter sent by the examiner in response to petitioner's recitation of 37 CFR 41.37 (c) (1) in which no summary is required.

Respectfully submitted,

William Y. Guess
11-20-07

William Y. Guess

Applicant pro se

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/964,000 Confirmation No. 3019
Applicant : William Y. Guess
Filed : 09/26/2001
TC/A.U. : 1761
Examiner : Becker, Drew

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, Va 22313-1450

**Third and Final Petition to Withdraw the Improper Notice of
Abandonment and to Advance the Appeal of the Above
Application
And notice of intent to sue.**

Sir,

Petitioner has a right, pursuant to Title 35 Section 134, to appeal a final, adverse decision of the examiner and did so by way of a notice of appeal filed 06/09/2005.

Petitioner timely filed an appeal brief on 08/05/2005 regarding the above application.

The notice of non-compliant appeal brief is fatally flawed.

The examiner sent an improper notice of Non-Compliant Appeal Brief on October 13 2005. The notice was improper in that the only box checked on this form was toward heading box IV relative to the requirement of 37CFR 41.37 (c) (1) in which a detailed summary of the invention is required. It was the summary that which the examiner stated was not property done. No summary is required by appellants not represented by a registered practitioner.

The required contents of the summary are described in 37CFR 41.37 (c) (1) (v). However this assertion by the examiner proposed a legal impossibility in that the Appeal Brief rule clearly and unconditionally requires nothing from applicants under headings (v) and (vi) when those applicants are not represented by a registered practitioner as is the case with petitioner. This language is clear, and again, unconditional. At the time, petitioner believed this to be a simple oversight by the examiner, in that presumably not many *pro se* appeals are filed. Within the required time period to respond (30 days), petitioner filed a response containing the following:

“In response to the Notification of Non-Compliant Brief, applicant disagrees and directs the examiners [sic] attention to 37 CFR § 41.37 (c) (1) which states clearly that appellants ‘not represented by a registered practitioner need only substantially comply with paragraphs (c) (1) (i)

through (iv) and (c) (1) (vii) through (c) (1) (x) of this section'. Pursuant to this clear language, appellant is not required to include either a summary of the invention under heading (v) or the grounds of rejection under heading (vi). Appellant included items under these headings as a courtesy to the board such that a single document (the brief) would contain the relevant, albeit in the case of the summary, cursory information. Appellant's invention is very simple."

Again, the above response was done so in a timely manner as stated within the notice.

Again, petitioner believed the form letter sent by the examiner stating the impossible was a mistake, much like petitioner's credit card information¹, including account number plus expiration date, being published on the internet by the USPTO. No harm was done in the second mistake, in that the applicant had that account cancelled. Harm is being done relative to the current situation regarding the improper notice of defective brief all based on examiner error.

The examiner's letter in response to applicant's response contains nothing accurate and set a "tacky trap" for the appellant.

Over five months following the improper notice of defective brief, the examiner sent, not a form, but an unusual appearing letter, with no specific heading, in which the first sentence thereof states again that the appeal brief does not contain a proper description of the invention under heading V of the brief.

¹ See attached PTO 2038 form

Contained within the above letter may be found the following in which the examiner states:

In the letter of 10/18/05 appellant argues that a pro se applicant need only “substantially comply” with this requirement. However, because there are 35 U.S.C. 112(1) new matter rejections of all the appealed claims, this requirement will not be waved [sic]. (emphasis added)

Other than indicating a timely response by the appellant, these two sentences contain nothing accurate. The rule regarding the brief does not require the appellant to supply anything under headings V and VI. Title 35 Section 112 first paragraph makes no mention of “new matter”. There are no outstanding “new matter” rejections toward any of the claims contained within the final rejection of the instant application, much less all of them. The words “pro se” appear nowhere in the alluded-to rule. It is further interesting to note that the most important word in the above passage is misspelled, namely: “waved”. Also petitioner has never seen the first paragraph of Section 112 indicated as “35 U.S.C. 112(1).

Appellants are only required to “substantially comply” with headings (i) through (iv) and (vii) though (x). Petitioner has filed other appeal briefs that contain nothing under the headings (v) and (vi) other than a reference to the rule. (See ser. number. 10/109478, this application is much more complicated than the simple two and three element claims of the instant application.)

The examiner goes on to state:

It is in appellant's best interests (*sic*) to provide evidence of support for all the rejected claim limitations so that the Board of Patent Appeals and Interferences can make an informed decision on this issue.

Petitioner felt surely that the lack of tolling of the time to respond to this bizarre letter was yet another error by the examiner. Quite the contrary, it would appear that the examiner took so long to respond to petitioner's recitation of the relevant rule in order to trap petitioner into his current predicament. This is very unfortunate and unfair. It is also arbitrary (see 10/109478 lack of anything under heading (v) and extremely capricious. And in complete frustration, and in response to this bizarre letter, petitioner filed a second albeit superfluous brief on 05/05/2006. And, much quicker than with any other response from this examiner, a notice of abandonment was filed on 05/19/2006. A trap had been set and sprung by the examiner.

Petitioner believed the response of October 13 2005 to be in order. Waiting until two weeks prior to the six month deadline to inform petitioner of the "rule change" and the lack of tolling, had the effect of increasing the cost of the potentially issued patent by enormous amount due to time extension fees. Beyond that it took this pro se applicant more than 2 weeks to rewrite the brief.

A first petition is filed around two weeks after the notice of abandonment, which, to date, has never been addressed by the USPTO.

After receiving the improper notice of abandonment, petitioner filed on 06/02/2006, a petition containing the relevant facts requesting, that the abandonment be withdraw and the appeal go forward. And, according to the image file wrapper This petition was assigned to the Technology Center SPRE. To date, this petition has not been answered by the SPRE or anyone else after apparently falling into some sort of administrative “black hole”.

A Second petition is dismissed due to a glaring though critical error by the office of petitions.

After waiting more than six months for a response to the first petition, a second petition was filed on 02/02/2007. **This petition was dismissed due to a critical, though glaring, error by the office of petitions.** In the dismissal the Senior Petitions Attorney states:

The application was held abandoned on November 15, 2005, for failure to file a timely response to the Notice of Non-Compliant Appeal Brief mailed, October 13, 2005. The Notice set a one month or 30 day period for reply. A response filed October 21, 2006 was followed up by a second Notice of Non-Compliant Appeal Brief mailed March 29, 2006. [emphasis added]

It should be apparent that the Senior Petitions Attorney signed this document without reading it very carefully. The date of response by the appellant was, and is, critical toward these issues. The date of response was Oct 21, 2005 not Oct,

21, 2006 as incorrectly stated in the petition dismissal. Petitioner's response should have advanced the appeal but did not. No action after petitioner's response of Oct. 21, 2006 has been legally proper by the USPTO.

This situation is actionable under the Administrative Procedure Act. Given the sheer number and severity of errors committed by the Office, petitioner will give the PTO one last opportunity to, allow each and every claim or write and submit an answer, docket the case and proceed with the appeal; otherwise an APA complaint will be filed no sooner than sixty days following the filing of this, the third (and final) petition to withdraw the improper notice of abandonment.

These errors include:

The improper notice of non-compliant appeal brief by the examiner relative to applicants first appeal brief.

The examiner countering appellant's timely response and recitation of the relevant rule with misstatements and a position clearly at odds with the CFR.

The "re-writing" of a federal regulation by the examiner who possesses no authority to do so.

The continued ignoring of applicant's first petition by the Technology Center's SPRE.

The critical, glaring error by the Senior Petitions Attorney in the dismissal of applicant's second petition.

Conclusion:

It seems a sad irony that a patent office rule intended to assist *pro se* applicants could be the focus of such relentless, constitutional, statutory and regulatory perversities regarding a *pro se* drafted, filed and prosecuted application.

A Notice of Intent to Sue will be sent, concurrent with this petition, to the USPTO Office of Solicitor, in petitioner's desperate hope of avoiding even more agonizing delay and financial misery relative to this case. Hopefully this notice may aid in rendering unnecessary, a legal action in the event this petition goes the way of the others. A copy of this petition will be attached to the notice.

Respectfully submitted,

William Y Guess
11-20-07

William Y Guess

Applicant *pro se*

FROM :

FAX NO. : 2259279049

Nov. 19 2002 08:25AM P3

OFFICIAL

PTO-2038 (02-2000)

Approved for use through 01/31/2003. OMB 0651-0043

United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Name as it Appears on Credit Card:	<u>William Y Gress</u>			
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Signature:	<u>William Y Gress</u>	Date:	<u>November 19, 2002</u>	

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Attorney Docket No.		Identify or Describe Mark	

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
----------	-------

0306

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters; and/or does not identify the structure, material, or acts described in the specification as corresponding to each claimed function for every means plus function and step plus function for each independent claim involved in the appeal and for each dependent claim argued separately by reference to the specification by page and line number, and to the drawing, if any, by reference characters, as required by 37 CFR 41.37(c)(1)(v). In the letter of 10/18/05 appellant argues that a pro se applicant need only "substantially comply" with this requirement. However, because there are 35 U.S.C. 112(1) new matter rejections of all the appealed claims, this requirement will not be waved. It is in appellant's best interests to provide evidence of support for all of the rejected claim limitations so that the Board of Patent Appeals and Interferences can make an informed decision on this issue.

Appellant is required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of the Notification of Non-compliant Appeal Brief (37 CFR 41.37) mailed on 10/13/05. Extensions of time may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew Becker
DREW BECKER
PRIMARY EXAMINER
3-2206